



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 13, 2009

Ms. Cynthia Villarreal-Reyna
Section Chief Agency Counsel
Legal and Compliance Division
Texas Department of Insurance
P.O. Box 149104, Mail Code 110-1A
Austin, Texas 78714- 9104

OR2009-06486

Dear Ms. Villarreal-Reyna:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 343787 (TDI ORR #88202).

The Texas Department of Insurance (the "department") received a request for any letters or communications between a named injured employee and various named elected officials and state agencies which were referenced in the response to a previous open records request. You state that you do not possess any information responsive to the request for any letters or communications to state agencies.¹ You claim that the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This section encompasses section 402.092 of the Labor Code, which provides confidentiality and exceptions to confidentiality for the investigation files of the department's Division of Workers' Compensation (the "division"). Section 402.092 provides in relevant part:

¹The Act does not require a governmental body that receives a request for information to create information that did not exist when the request was received. See *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990).

(a) In this section, "investigation file" means any information compiled or maintained by the division with respect to a division investigation under this subtitle or other workers' compensation law.[]

(b) Information maintained in the investigation files of the division is confidential and may not be disclosed except [in five specified situations].

Labor Code § 402.092(a)-(b). You claim the submitted information consists of information in an investigation file maintained under section 414.005 of the Labor Code and is confidential under section 402.092. You also state that none of the release provisions of section 402.092 apply. *See id.* § 402.092. Accordingly, we find that the submitted information is generally excepted from disclosure under section 552.101 of the Government Code in conjunction with section 402.092 of the Labor Code. However, you state that the submitted information may also be maintained in the claim file. Section 402.092(d) provides that information in or derived from a claim file is governed by the confidentiality provisions applicable to that information. *Id.* § 402.092(d). The confidentiality of a claim file is covered by section 402.083 of the Labor Code. *Id.* § 402.083. Accordingly, we will address the applicability of section 402.083 and the previous determination issued in Open Records Letter No. 2004-9096 (2004) to this information.

You assert that if the information at issue is part of the claim file, then it is subject to a previous determination. Open Records Letter No. 2004-9096 authorizes the department's predecessor, the commission, to withhold claim file information relating to a workers' compensation claimant who is identified by the requestor under section 402.083 of the Labor Code. That ruling was based on the finding that the requestor was not eligible to receive the information at issue under section 402.084 of the Labor Code. However, you inform us that you have not yet determined whether the requestor is eligible to receive the submitted information in this instance under section 402.084 of the Labor Code. As you state you will release the claim file information, if the requestor is eligible to receive such information, the circumstances in this instance differ from those in Open Records Letter No. 2004-9096, and the department may not rely on that ruling as a previous determination. *See Gov't Code* § 552.301(a); Open Records Decision No. 673 at 7-8 (2001) (listing elements of second type of previous determination). Accordingly, we will address your argument under section 402.083 of the Government Code.

Section 552.101 also encompasses section 402.083 of the Labor Code, which provides that "[i]nformation in or derived from a claim file regarding an employee is confidential and may not be disclosed by the division except as provided by this subtitle[.]" Labor Code § 402.083(a). This office has interpreted section 402.083 to protect only that "information in or derived from a claim file that explicitly or implicitly discloses the identities of employees who file workers' compensation claims." Open Records Decision No. 619 at 10 (1993). However, we also have stated that "[w]hether specific information implicitly discloses the identify of a particular employee must be determined on a case-by-case basis." *Id.* In this instance, the requestor seeks access to information in the file of a named

workers' compensation claimant. Thus, we conclude that section 402.083 is generally applicable to the submitted information in its entirety. However, you inform this office that section 402.084 may apply in this instance. Thus, we will address the applicability of section 402.084.

Section 402.084 provides in relevant part:

(a) The division shall perform and release a record check on an employee, including current or prior injury information, to the parties listed in Subsection (b) if:

(1) the claim is:

(A) open or pending before the division;

(B) on appeal to a court of competent jurisdiction; or

(C) the subject of a subsequent suit in which the insurance carrier or the subsequent injury fund is subrogated to the rights of the named claimant; and

(2) the requesting party requests the release on a form prescribed by the division for this purpose and provides all required information.

(b) Information on a claim may be released as provided Subsection (a) to:

...

(4) the insurance carrier[.]

Labor Code § 402.084(a), (b)(4). Whether the requestor would be qualified to receive the submitted confidential claimant information presents, in part, a question of fact. This office cannot resolve factual disputes in the opinion process. *See* Open Records Decision Nos. 592 at 2 (1991), 552 at 4 (1990), 435 at 4 (1986). Accordingly, if the department determines the requestor is eligible to receive the submitted information under section 402.084 of the Labor Code, then to the extent the submitted information consists of information in or derived from a claim file, the department may release the submitted information in accordance with that section. However, if the department determines that the requestor is not eligible to receive the submitted information under section 402.084 of the Labor Code, then to the extent the submitted information consists of information or derived from a claim file, the department must withhold the submitted information in its entirety under section 552.101 of the Government Code in conjunction with section 402.083 of the Labor Code.

In summary, if the submitted documents consist of information maintained in the investigation file, the department must withhold the submitted information under section 552.101 in conjunction with section 402.092(c) of the Labor Code. However, to the extent that the submitted information consists of information in or derived from a claim file, the department:(1) may release the submitted information in accordance with section 402.084 of the Labor Code if the department determines that the requestor is eligible to receive such information under section 402.084 of the Labor Code; or (2) must withhold the submitted information under section 552.101 of the Government Code in conjunction with section 402.083 of the Labor Code if the department determines that the requestor is not eligible to receive the submitted information under section 402.084 of the Labor Code.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General at (512) 475-2497.

Sincerely,



Greg Henderson
Assistant Attorney General
Open Records Division

GH/rl

Ref: ID#343787

Enc. Submitted documents

c: Requestor
(w/o enclosures)